

REMARKS/ARGUMENTS

Claims 44-69 will be pending upon entry of this amendment. Claim 44 has been revised to add a structural limitation. Support for “at least 90-95% identical to the polypeptide of SEQ ID NO: 3” is found on page 7, line, 23 of the specification. Claims 59-64 have been amended to depend from Claim 52. Minor editorial revisions have been made to Claims 50, 58 and 59. New Claim 65 finds support on page 12, lines 19-22 of the specification. Claims 66-69 find support in the specification as follows: Claim 66 (page 9, line 26 through page 10, line 6 and on page 6, lines 16-18 ), Claim 67 (page 7, lines 19-20), Claim 68 (Sequence Listing, pages 2-3) and Claim 69 (page 6, lines 9-10). Accordingly, the Applicants do not believe that any new matter has been added.

The Applicants thank Examiner Fronda for the discussions on September 21 and 22, 2005. Various revisions to address the remaining rejections were discussed, including a further structural limitation to further describe the *mdhA* gene. This structural limitation has now been added to independent Claim 44. Favorable consideration and allowance of this application is respectfully requested.

Claim Objections

Claims 47, 52 and 56 were objected to for various informalities which have now been corrected. Accordingly, these objections may now be withdrawn.

Rejection—35 U.S.C. §112, second paragraph

Claims 44-64 are rejected under 35 U.S.C. 112, second paragraph as being indefinite. These rejections are moot in view of the amendments above.

Rejections—35 U.S.C. §112, first paragraph

Claims 44-64 are rejected under 35 U.S.C. 112, first paragraph as lacking adequate description and enablement. These rejections are moot in view of the amendments above.

Rejection—35 U.S.C. §112, first paragraph

Claim 51 was rejected under 35 U.S.C. 112, first paragraph as lacking enablement with respect to deposited material. The Applicants respectfully request that this rejection be withdrawn in view of the following statement.

Statement with Respect to Deposited Material

*Escherichia coli* DH5 $\alpha$ mcr/pEMmdhAint was deposited under the terms of the Budapest Treaty as DSM13494. As required by 37 C.F.R. 1.808, subject to the one exception permitted by 37 C.F.R. 1.808(b), all restrictions imposed by the depositor on the availability to the public of the deposited material will be irrevocably removed upon granting of the patent. See MPEP 2410.01.

CONCLUSION

The Applicants now respectfully request entry of this Preliminary Amendment and an early examination on the merits.

Respectfully submitted,

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